

REFERENCE TITLE: ASRS; plan design amendments

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1353

Introduced by
Senator Gould

AN ACT

AMENDING SECTIONS 38-711, 38-740, 38-742 AND 38-757, ARIZONA REVISED
STATUTES; MAKING AN APPROPRIATION; RELATING TO THE ARIZONA STATE RETIREMENT
SYSTEM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 38-711, Arizona Revised Statutes, is amended to
3 read:

4 38-711. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Active member" means a member as defined in paragraph 23,
7 subdivision (b) of this section who satisfies the eligibility criteria
8 prescribed in section 38-727 and who is currently making member contributions
9 as prescribed in section 38-736.

10 2. "Actuarial equivalent" means equality in value of the aggregate
11 amounts expected to be received under two different forms of payment, based
12 on mortality and interest rate assumptions approved from time to time by the
13 board.

14 3. "ASRS" means the Arizona state retirement system established by
15 this article.

16 4. "Assets" means the resources of ASRS including all cash,
17 investments or securities.

18 5. "Average monthly compensation" means:

19 (a) For a member whose membership in ASRS commenced before January 1,
20 1984 and who left the member's contributions on deposit or reinstated
21 forfeited credited service pursuant to section 38-742 for a period of
22 employment that commenced before January 1, 1984, THE HIGHER OF EITHER:

23 (i) THE MONTHLY AVERAGE OF COMPENSATION THAT IS CALCULATED PURSUANT TO
24 SUBDIVISION (b) OF THIS PARAGRAPH.

25 (ii) The monthly average of compensation on which contributions were
26 remitted during a period of sixty consecutive months during which the member
27 receives the highest compensation within the last one hundred twenty months
28 of credited service. Any month for which no contributions are reported to
29 ASRS or that falls within a period of nonpaid or partially paid leave of
30 absence or sabbatical leave shall be excluded from the computation. The
31 sixty consecutive months may entirely precede, may be both before and after
32 or may be completely after any excluded months. If the member was employed
33 for less than sixty consecutive months, the average monthly compensation is
34 based on the total consecutive months worked. Payments for accumulated
35 vacation or annual leave, sick leave, compensatory time or other forms of
36 termination pay which, before August 12, 2005, constitute compensation for
37 members whose membership in ASRS commenced before January 1, 1984, do not
38 cease to be included as compensation if paid in the form of nonelective
39 employer contributions under a 26 United States Code section 403(b) plan if
40 all payments of employer and employee contributions are made at the time of
41 termination. Contributions shall be made to ASRS on these amounts pursuant
42 to sections 38-735, 38-736 and 38-737.

43 (b) ~~Effective July 1, 1985~~ FOR A MEMBER WHOSE MEMBERSHIP IN ASRS
44 COMMENCED ON OR AFTER JANUARY 1, 1984 BUT BEFORE JULY 1, 2010, the monthly
45 average of compensation on which contributions were remitted during a period

1 of thirty-six consecutive months during which a member receives the highest
2 compensation within the last one hundred twenty months of credited service.
3 Any month for which no contributions are reported to ASRS or that falls
4 within a period of nonpaid or partially paid leave of absence or sabbatical
5 leave shall be excluded from the computation. The thirty-six consecutive
6 months may entirely precede, may be both before and after or may be
7 completely after any excluded months. If the member was employed for less
8 than thirty-six consecutive months, the average monthly compensation shall be
9 based on the total consecutive months worked. ~~This subdivision applies only
10 to members whose membership in ASRS was effective after December 31, 1983 or
11 who agree in writing as a binding condition of eligibility for being granted
12 the benefit advantages available under this subdivision to have their benefit
13 computed on the basis of the definition of compensation.~~

14 (c) FOR A MEMBER WHOSE MEMBERSHIP IN ASRS COMMENCED ON OR AFTER JULY
15 1, 2010, THE MONTHLY AVERAGE OF COMPENSATION ON WHICH CONTRIBUTIONS WERE
16 REMITTED DURING A PERIOD OF SIXTY CONSECUTIVE MONTHS DURING WHICH A MEMBER
17 RECEIVES THE HIGHEST COMPENSATION WITHIN THE LAST ONE HUNDRED TWENTY MONTHS
18 OF CREDITED SERVICE. ANY MONTH FOR WHICH NO CONTRIBUTIONS ARE REPORTED TO
19 ASRS OR THAT FALLS WITHIN A PERIOD OF NONPAID OR PARTIALLY PAID LEAVE OF
20 ABSENCE OR SABBATICAL LEAVE SHALL BE EXCLUDED FROM THE COMPUTATION. THE
21 SIXTY CONSECUTIVE MONTHS MAY ENTIRELY PRECEDE, MAY BE BOTH BEFORE AND AFTER
22 OR MAY BE COMPLETELY AFTER ANY EXCLUDED MONTHS. IF THE MEMBER WAS EMPLOYED
23 FOR LESS THAN SIXTY CONSECUTIVE MONTHS, THE AVERAGE MONTHLY COMPENSATION
24 SHALL BE BASED ON THE TOTAL CONSECUTIVE MONTHS WORKED.

25 6. "Board" means the ASRS board established in section 38-713.

26 7. "Compensation" means the gross amount paid to a member by an
27 employer as salary or wages, including amounts that are subject to deferred
28 compensation or tax shelter agreements, for services rendered to or for an
29 employer, or that would have been paid to the member except for the member's
30 election or a legal requirement that all or part of the gross amount be used
31 for other purposes, but does not include amounts paid in excess of
32 compensation limits established in section 38-746. Compensation includes
33 amounts paid as salary or wages to a member by a second employer.
34 Compensation, as provided in paragraph 5, subdivision (b) of this section,
35 does not include:

36 (a) Lump sum payments, on termination of employment, for accumulated
37 vacation or annual leave, sick leave, compensatory time or any other form of
38 termination pay whether the payments are made in one payment or by
39 installments over a period of time.

40 (b) Damages, costs, attorney fees, interest or other penalties paid
41 pursuant to a court order or a compromise settlement or agreement to satisfy
42 a grievance or claim even though the amount of the payment is based in whole
43 or in part on previous salary or wage levels, except that, if the court order
44 or compromise settlement or agreement directs salary or wages to be paid for
45 a specific period of time, the payment is compensation for that specific

1 period of time. If the amount directed to be paid is less than the actual
2 salary or wages that would have been paid for the period if service had been
3 performed, the contributions for the period shall be based on the amount of
4 compensation that would have been paid if the service had been performed.

5 (c) Payment, at the member's option, in lieu of fringe benefits that
6 are normally paid for or provided by the employer.

7 (d) Merit awards pursuant to section 38-613 and performance bonuses
8 paid to assistant attorneys general pursuant to section 41-192.

9 8. "Contingent annuitant" means the person named by a member to
10 receive retirement income payable following a member's death after retirement
11 as provided in section 38-760.

12 9. "Credited service" means, subject to section 38-739, the number of
13 years standing to the member's credit on the books of ASRS during which the
14 member made the required contributions.

15 10. "Current annual compensation" means the greater of:

16 (a) Annualized compensation of the typical pay period amount
17 immediately before the date of a request to ASRS to purchase credited service
18 pursuant to section 38-743, 38-744 or 38-745. The typical pay period amount
19 shall be determined by taking the five pay periods immediately before the
20 date of a request, disregarding the highest and lowest compensation amount
21 pay periods and averaging the three remaining pay periods.

22 (b) Annualized compensation of the partial year, disregarding the
23 first compensation amount pay period, if the member has less than twelve
24 months total credited service on the date of a request to purchase credited
25 service pursuant to section 38-743, 38-744 or 38-745.

26 (c) The sum of the twelve months of compensation immediately before
27 the date of a request to ASRS to purchase credited service pursuant to
28 section 38-743, 38-744 or 38-745.

29 (d) The sum of the thirty-six months of compensation immediately
30 before the date of a request to ASRS to purchase credited service pursuant to
31 section 38-743, 38-744 or 38-745 divided by three.

32 (e) If the member has retired one or more times from ASRS, the average
33 monthly compensation that was used for calculating the member's last pension
34 benefit times twelve.

35 11. "Early retirement" means retirement before a member's normal
36 retirement date after five years of total credited service and attainment of
37 age fifty.

38 12. "Effective date" means July 1, 1970, except with respect to
39 employers and members whose contributions to ASRS commence thereafter, the
40 effective date of their membership in ASRS is as specified in the applicable
41 joinder agreement.

42 13. "Employer" means:

43 (a) This state.

44 (b) Participating political subdivisions.

45 (c) Participating political subdivision entities.

1 14. "Employer contributions" means all amounts paid into ASRS by an
2 employer on behalf of a member.

3 15. "Fiscal year" means the period from July 1 of any year to June 30
4 of the following year.

5 16. "Inactive member" means a member who previously made contributions
6 to ASRS and who satisfies each of the following:

7 (a) Has not retired.

8 (b) Is not eligible for active membership in ASRS.

9 (c) Is not currently making contributions to ASRS.

10 (d) Has not withdrawn contributions from ASRS.

11 17. "Interest" means the assumed actuarial investment earnings rate
12 approved by the board.

13 18. "Internal revenue code" means the United States internal revenue
14 code of 1986, as amended.

15 19. "Investment management" means the persons, companies, banks,
16 insurance company investment funds, mutual fund companies, management or any
17 combinations of those entities that are appointed by ASRS and that have
18 responsibility and authority for investment of the monies of ASRS.

19 20. "Late retirement" means retirement after normal retirement.

20 21. "Leave of absence" means any unpaid leave authorized by the
21 employer, including leaves authorized for sickness or disability or to pursue
22 education or training.

23 22. "Life annuity" means equal monthly installments payable during the
24 member's lifetime after retirement.

25 23. "Member":

26 (a) Means any employee of an employer on the effective date.

27 (b) Means all employees of an employer who are eligible for membership
28 pursuant to section 38-727 and who are engaged to work at least twenty weeks
29 in each fiscal year and at least twenty hours each week.

30 (c) Means any person receiving a benefit under ASRS.

31 (d) Means any person who is a former active member of ASRS and who has
32 not withdrawn contributions from ASRS pursuant to section 38-740.

33 (e) Does not include any employee of an employer who is otherwise
34 eligible pursuant to this article and who begins service in a limited
35 appointment for not more than eighteen months on or after July 1, 1979. If
36 the employment exceeds eighteen months, the employee shall be covered by ASRS
37 as of the beginning of the nineteenth month of employment. In order to be
38 excluded under this subdivision, classifications of employees designated by
39 employers as limited appointments must be approved by the director.

40 (f) Does not include any leased employee. For the purposes of section
41 414(n) of the internal revenue code, "leased employee" means an individual
42 who:

43 (i) Is not otherwise an employee of an employer.

44 (ii) Pursuant to a leasing agreement between the employer and another
45 person, performs services for the employer on a substantially full-time basis

1 for at least one year.

2 (iii) Performs services under the primary direction or control of the
3 employer.

4 24. "Member contributions" means all amounts paid to ASRS by a member.

5 25. "Normal costs" means the sum of the individual normal costs for all
6 active members for each fiscal year. The normal cost for an individual
7 active member is the cost that is assigned to the fiscal year using the
8 projected unit credit method.

9 26. "Normal retirement age" means the age at which a member reaches the
10 member's normal retirement date.

11 27. "Normal retirement date" means the earliest of the following:

12 (a) A member's sixty-fifth birthday.

13 (b) A member's sixty-second birthday and completion of at least ten
14 years of credited service.

15 (c) FOR A MEMBER WHOSE MEMBERSHIP COMMENCED BEFORE JULY 1, 2010, the
16 first day that the sum of a member's age and years of total credited service
17 equals eighty. FOR A MEMBER WHOSE MEMBERSHIP COMMENCED ON OR AFTER JULY 1,
18 2010, THE FIRST DAY THAT THE SUM OF A MEMBER'S AGE AND YEARS OF TOTAL
19 CREDITED SERVICE EQUALS EIGHTY-FIVE.

20 28. "Political subdivision" means any political subdivision of this
21 state and includes a political subdivision entity.

22 29. "Political subdivision entity" means an entity:

23 (a) That is located in this state.

24 (b) That is created in whole or in part by political subdivisions,
25 including instrumentalities of political subdivisions.

26 (c) Where a majority of the membership of the entity is composed of
27 political subdivisions.

28 (d) Whose primary purpose is the performance of a government related
29 service.

30 30. "Retired member" means a member who is receiving retirement
31 benefits pursuant to this article.

32 31. "Service year" means fiscal year, except that:

33 (a) If the normal work year required of a member is less than the full
34 fiscal year but is for a period of at least nine months, the service year is
35 the normal work year.

36 (b) For a salaried member employed on a contract basis under one
37 contract, or two or more consecutive contracts, for a total period of at
38 least nine months, the service year is the total period of the contract or
39 consecutive contracts.

40 (c) In determining average monthly compensation pursuant to paragraph
41 5 of this section, the service year is considered to be twelve months of
42 compensation.

43 32. "State" means this state, including any department, office, board,
44 commission, agency, institution or other instrumentality of this state.

45 33. "Vested" means that a member is eligible to receive a future

1 retirement benefit.

2 Sec. 2. Section 38-740, Arizona Revised Statutes, is amended to read:

3 ~~38-740.~~ Return of contributions

4 A. ~~Any~~ A member WHOSE MEMBERSHIP COMMENCED BEFORE JULY 1, 2010 AND who
5 leaves employment other than by retirement or death may elect to receive a
6 return of the contributions as follows:

7 1. If the member has less than five years of credited service, the
8 member shall receive the member's contributions.

9 2. If a member has five or more years of credited service, the member
10 shall receive the member's contributions and an amount equal to a percentage
11 of the employer contributions paid on behalf of the member. The percentage
12 of employer contributions paid on behalf of the member shall be as follows:

13 (a) 5.0 to 5.9 years of credited service, twenty-five per cent.

14 (b) 6.0 to 6.9 years of credited service, forty per cent.

15 (c) 7.0 to 7.9 years of credited service, fifty-five per cent.

16 (d) 8.0 to 8.9 years of credited service, seventy per cent.

17 (e) 9.0 to 9.9 years of credited service, eighty-five per cent.

18 (f) 10.0 or more years of credited service, one hundred per cent.

19 ~~3. Interest on the returned contributions as determined by the board.~~

20 B. A MEMBER WHOSE MEMBERSHIP COMMENCED ON OR AFTER JULY 1, 2010 AND
21 WHO LEAVES EMPLOYMENT OTHER THAN BY RETIREMENT OR DEATH MAY ELECT TO RECEIVE
22 A RETURN OF THE MEMBER'S CONTRIBUTIONS. IF THE MEMBER HAS FIVE OR MORE YEARS
23 OF CREDITED SERVICE, THE MEMBER SHALL RECEIVE THE MEMBER'S CONTRIBUTIONS AND
24 AN AMOUNT EQUAL TO TWENTY-FIVE PER CENT OF THE EMPLOYER CONTRIBUTIONS PAID ON
25 BEHALF OF THE MEMBER.

26 C. THE AMOUNT RETURNED PURSUANT TO SUBSECTION A OR B ACCUMULATES
27 INTEREST AT A RATE THAT IS DETERMINED BY THE BOARD.

28 ~~B.~~ D. Withdrawal of contributions with interest constitutes a
29 withdrawal from membership in ASRS and results in a forfeiture of all other
30 benefits under ASRS.

31 ~~C.~~ E. Notwithstanding any other provision of this article, a member
32 who has not received a return of contributions pursuant to this section may
33 combine any two or more periods of service for purposes of determining the
34 member's benefits.

35 ~~D.~~ F. If a member receives more than the amount due to a member
36 pursuant to this section, the member shall repay the amount of the
37 overpayment together with interest at the interest rate earned on ASRS
38 investments as reported on a quarterly basis, but not less than the valuation
39 rate established by the board, from the time of overpayment to the settlement
40 of the debt.

41 Sec. 3. Section 38-742, Arizona Revised Statutes, is amended to read:

42 ~~38-742.~~ Reinstatement

43 A. If an active member who received a return of contributions on
44 termination of employment and by receipt of those contributions forfeited
45 credited service earned on that employment, as provided in section 38-740,

1 subsection A OR B, is subsequently reemployed by an employer, the member's
2 service shall be credited only from the date the member's most recent
3 reemployment period commenced.

4 B. Notwithstanding subsection A of this section, the member may
5 redeposit the amount of the contributions the member received at the time of
6 the member's separation from service, with interest on that amount to the
7 date of redeposit at the interest rate assumption approved by the board for
8 actuarial equivalency. On satisfaction of this obligation, the member's
9 service credits acquired by the previous employment shall be reinstated. The
10 member is subject to the benefits and duties in effect at the time of the
11 member's most recent reemployment except as provided in section 38-711,
12 paragraph 5, subdivision (a). If a member redeposits less than the amount
13 required under this subsection, ASRS shall proportionately reduce the
14 member's reinstated service credits.

15 C. A member who is receiving benefits pursuant to section 38-797.07 and
16 who received a return of contributions on termination of employment and by
17 receipt of those contributions forfeited credited service earned on that
18 employment, as provided in section 38-740, subsection A OR B, may redeposit
19 the amount of the contributions the member received at the time of the
20 member's previous separation from service, with interest on that amount to
21 the date of redeposit at the interest rate assumption approved by the board
22 for actuarial equivalency. On redeposit of the contributions and interest,
23 the member's service credits acquired by the previous employment shall be
24 reinstated. The member is subject to the benefits and duties in effect at
25 the time of the member's most recent reemployment except as provided in
26 section 38-711, paragraph 5, subdivision (a). If a member redeposits less
27 than the amount required under this subsection, ASRS shall proportionately
28 reduce the member's reinstated service credits.

29 Sec. 4. Section 38-757, Arizona Revised Statutes, is amended to read:

30 38-757. Normal retirement

31 A. After application on a form prescribed by the director, a member
32 may retire on reaching the member's normal retirement date.

33 B. Except as provided in section 38-768 ~~and subsection C of this~~
34 ~~section~~, a member who meets the requirements for retirement benefits at
35 normal retirement shall receive a monthly life annuity that equals the result
36 of paragraph 1 multiplied by paragraph 2 when those paragraphs are defined as
37 follows:

38 1. The number of whole and fractional years of credited service times
39 the following:

40 (a) 2.10 per cent if the member does not have more than 19.99 years of
41 credited service.

42 (b) 2.15 per cent if the member has at least 20.00 years of credited
43 service but not more than 24.99 years of credited service.

44 (c) 2.20 per cent if the member has at least 25.00 years of credited
45 service but not more than 29.99 years of credited service.

1 (d) 2.30 per cent if the member has at least 30.00 years of credited
2 service.

3 2. The member's average monthly compensation.

4 ~~C. For a person who becomes a member on or after the effective date of~~
5 ~~this amendment to this section, the amount of a member's monthly life annuity~~
6 ~~computed pursuant to subsection B of this section shall not be more than~~
7 ~~eighty per cent of the member's average monthly compensation. This~~
8 ~~limitation does not preclude benefit increases pursuant to section 38-767.~~

9 ~~D.~~ C. Employers shall provide evidence of, and certify to, in a manner
10 provided by the board, the member's average monthly compensation if that
11 information is not already available from the records of ASRS.

12 Sec. 5. Appropriation; Arizona state retirement system;
13 exemption

14 A. The sum of \$1,341,722 is appropriated from the Arizona state
15 retirement system account in fiscal year 2009-2010 to the Arizona state
16 retirement system for administrative implementation of this act.

17 B. The appropriation made in subsection A of this section is exempt
18 from the provisions of section 35-190, Arizona Revised Statutes, relating to
19 lapsing of appropriations.